

Kristensen Weisberg, LLP
12304 Santa Monica Blvd., Suite 100
Los Angeles, California 90025

JOHN P. KRISTENSEN (SBN 224132)
DAVID L. WEISBERG (SBN 211675)
KRISTENSEN WEISBERG, LLP
12304 Santa Monica Blvd., Suite 100
Los Angeles, California 90025
Telephone: 310-507-7924
Fax: 310-507-7906
john@kristensenlaw.com
david@kristensenlaw.com

Attorneys for Plaintiff and all others similarly situated

**THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

SONIA MOMITA, on behalf of
herself and all others similarly
situated,

Plaintiff,

vs.

GRAND BAHAMA CRUISE LINE,
LLC; and DOES 1 through 20,
inclusive, and each of them,

Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

- (1) Violations of the Telephone
Consumer Protection Act, 47
U.S.C. § 227, *et seq.*
- (2) Willful Violations of the
Telephone Consumer Protection
Act, 47 U.S.C. § 227, *et seq.*

DEMAND FOR JURY TRIAL

Plaintiff Sonia Momita (“Plaintiff”), on behalf of herself and all others
similarly situated, alleges the following upon information and belief based upon
personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for herself and others similarly situated

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1 seeking damages and any other available legal or equitable remedies resulting
 2 from the illegal actions of defendants Grand Bahama Cruise Line, Inc. and
 3 DOES 1 through 20 (collectively “Defendants”), in negligently knowingly,
 4 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation
 5 of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”),
 6 thereby invading Plaintiff’s privacy.

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because
 9 Plaintiff, a resident of Los Angeles California, seeks relief on behalf of a Class,
 10 which will result in at least one class member belonging to a different state than
 11 that of Defendant, a company with its principal place of business in Florida.

12 3. Plaintiff also seeks up to \$1,500.00 in damages for each call in
 13 violation of the TCPA, which, when aggregated among a proposed class in the
 14 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
 15 Therefore, both diversity jurisdiction and the damages threshold under the Class
 16 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
 17 jurisdiction.

18 4. Venue is proper in the United States District Court for the Central
 19 District of California pursuant to 18 U.S.C. §§ 1391(b) and 144(a) because
 20 Defendant does business within the State of California and the County of Los
 21 Angeles. Furthermore, Plaintiff is a resident of Los Angeles County.

22 **PARTIES**

23 5. Plaintiff, Sonia Momita (“Plaintiff”), is a natural person residing in
 24 Los Angeles County in California.

25 6. Defendant Grand Bahama Cruise Line, Inc. (“Grand Bahama” or
 26 “Defendant”) is a Florida limited liability corporation with its principal place of
 27 business at 801 International Parkway, 5th Floor, Lake Mary, Florida 32746.
 28 Plaintiff is informed and believes that Grand Bahama conducted and conducts

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1 business in Los Angeles County. Furthermore, its registered agent for service of
 2 process is listed with the Florida Secretary of State as Bethany Worstell, 351
 3 Lone Hill Drive, Unit 107, Altamonte Springs, Florida 32701.

4 7. The above named Defendants, and their subsidiaries and agents, are
 5 collectively referred to as “Defendants.” The true names and capacities of the
 6 Defendants sued herein as DOE DEFENDANTS 1 through 20, inclusive, are
 7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
 8 names. Each of the Defendants designated herein as a DOE is legally
 9 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
 10 Court to amend the Complaint to reflect the true names and capacities of the
 11 DOE Defendants when such identities become known.

12 8. Plaintiff is informed and believes and thereon alleges that at all
 13 relevant times, each and every Defendant was acting as an agent and/or
 14 employee of each of the other Defendants and was the owner, agent, servant,
 15 joint venturer and employee, each of the other and each was acting within the
 16 course and scope of its ownership, agency, service, joint venture and
 17 employment with the full knowledge and consent of each of the other
 18 Defendants. Plaintiff is informed and believes and thereon alleges that each of
 19 the acts and/or omissions complained of herein was made known to, and ratified
 20 by, each of the other Defendants.

21 9. At all times mentioned herein, each and every Defendant was the
 22 successor of the other and each assumes the responsibility for each other’s acts
 23 and omissions.

24 **FACTUAL ALLEGATIONS**

25 10. Beginning on or around November 1, 2014 in the afternoon and on
 26 the morning of April 7, 2015, Defendants contacted Plaintiff on her cellular
 27 telephone at (310) ***-77739, in an attempt to communicate with Plaintiff. The
 28 calls came from number (213) 257-5233.

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11. Defendants used an “automated telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to communicate with Plaintiff regarding services.

12. Defendants’ call(s) constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

13. Defendants’ call(s) were placed to telephone numbers assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

14. Defendants never received Plaintiff’s “prior express consent” to receive calls using an automated dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

15. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or other applicable law, on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter “the Class”) defined as follows:

All persons within the United States who received any telephone calls from Defendants to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously provided express consent to receiving such calls within the four (4) years prior to the filing of this Complaint

16. Plaintiff represents, and is a member of the Class, consisting of All persons within the United States who received any telephone call from Defendants to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to

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1 Defendants within the four years prior to the filing of this Complaint.

2 17. Excluded from the Class are governmental entities, Defendants, any
 3 entity in which Defendants have a controlling interest, and Defendants' officers,
 4 directors, affiliates, legal representatives, employees, co-conspirators, successors,
 5 subsidiaries, and assigns. Also excluded from the Class are any judges, justices
 6 or judicial officers presiding over this matter and the members of their immediate
 7 families and judicial staff.

8 18. This action is properly maintainable as a class action. This action
 9 satisfies the numerosity, typicality, adequacy, predominance and superiority
 10 requirements for a class action.

11 19. **Numerosity:** The proposed Class is so numerous that individual
 12 joinder of all members is impracticable. Due to the nature of the trade and
 13 commerce involved, Plaintiff does not know the number of members in the
 14 Class, but believes the Class members number in the thousands, if not more.
 15 Plaintiff alleges that the Class may be ascertained by the records maintained by
 16 Defendants.

17 20. Plaintiff and members of the Class were harmed by the acts of
 18 Defendant(s) in at least the following ways: Defendant(s) illegally contacted
 19 Plaintiff and Class members via their cellular telephones thereby causing
 20 Plaintiff and Class members, without their "prior express consent," to incur
 21 certain charges or reduced telephone time for which Plaintiff and Class members
 22 had previously paid by having to retrieve or administer message(s) left by
 23 Defendants during those illegal calls, and invading the privacy of said Plaintiff
 24 and Class members.

25 21. **Common Questions of Law and Fact Predominate:** There are
 26 only a few legal and factual issues to determine if there is liability under the
 27 TCPA and for each of those questions of law and fact, common issues to the
 28 Class predominate over any questions that may affect individual Class members,

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1 in that the claims of all Class members for each of the claims herein can be
 2 established with common proof. Common questions of fact and law include, but
 3 are not limited to, the following:

- 4 (a) Whether, within the four years prior to the filing of this
 5 Complaint, Defendant(s) made any calls (other than a call made
 6 for emergency purposes or made with the prior express consent
 7 of the called party) to a Class member using any automated
 8 dialing system or an artificial or prerecorded voice to any
 9 telephone number assigned to a cellular telephone service;
- 10 (b) Whether Plaintiff and the Class members were damaged thereby,
 11 and the extent of the statutory damages for each such violation;
 12 and
- 13 (c) Whether the Defendant(s) should be enjoined from engaging in
 14 such conduct in the future.

15 22. **Typicality:** Plaintiff's claims are typical of the claims of members
 16 of the Class, as Plaintiff was subject to the same common course of conduct by
 17 Defendant(s) as all Class members. The injuries to each member of the Class
 18 were caused directly by Defendant(s)' wrongful conduct as alleged herein.

19 23. **Adequacy of Representation:** Plaintiff will fairly and adequately
 20 represent and protect the interests of the Class. Plaintiff has retained counsel
 21 with substantial experience in handling complex class action litigation. Plaintiff
 22 and her counsel are committed to prosecuting this action vigorously on behalf of
 23 the Class and have financial resources to do so.

24 24. **Superiority of Class Action:** A class action is superior to other
 25 available methods for the fair and efficient adjudication of the present
 26 controversy. Class members have little interest in individually controlling the
 27 prosecution of separate actions because the individual damage claims of each
 28 Class member are not substantial enough to warrant individual filings. In sum,

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1 for many, if not most, Class members, a class action is the only feasible
 2 mechanism that will allow them an opportunity for legal redress and justice.
 3 Plaintiff is unaware of any litigation concerning the present controversy already
 4 commenced by members of the Class. The conduct of this action as a class
 5 action in this forum, with respect to some or all of the issues presented herein,
 6 presents fewer management difficulties, conserves the resources of the parties
 7 and of the court system, and protects the rights of each Class member.

8 25. Moreover, individualized litigation would also present the potential
 9 for varying, inconsistent, or incompatible standards of conduct for Defendants,
 10 and would magnify the delay and expense to all parties and to the court system
 11 resulting from multiple trials of the same factual issues. The adjudication of
 12 individual Class members' claims would also, as a practical matter, be
 13 dispositive of the interests of other members not parties to the adjudication, and
 14 could substantially impair or impede the ability of other Class members to
 15 protect their interests.

16 26. Plaintiff and the members of the Class have suffered and will
 17 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful
 18 conduct. Defendant(s) have acted, or refused to act, in respects generally
 19 applicable to the Class, thereby making appropriate final and injunctive relief
 20 with regard to the members of the Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **(VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**

23 **47 U.S.C. *ET SEQ.*)**

24 **(Against All Defendants)**

25 27. Plaintiff hereby incorporates by reference and re-alleges each and
 26 every allegation set forth in each and every preceding paragraph of this
 27 Complaint, as though fully set forth herein.

28 28. The foregoing acts and omission of Defendants constitute numerous

CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

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1 and multiple violations of the TCPA, including but not limited to each and every
 2 one of the above cited provisions of 47 U.S.C. § 227, *et seq.*

3 29. As a result of Defendants violations of 47 U.S.C. § 227, *et seq.*,
 4 Plaintiff and the Class Members are entitled to an award of \$500.00 in statutory
 5 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

6 30. Plaintiff and the Class members are also entitled to and seek
 7 injunctive relief prohibiting such conduct in the future.

8 **SECOND CAUSE OF ACTION**

9 (KNOWING AND/OR WILLFUL VIOLATION OF
 10 THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. *ET SEQ.*)

11 (Against All Defendants)

12 31. Plaintiff hereby incorporates by reference and re-alleges each and
 13 every allegation set forth in each and every preceding paragraph of this
 14 Complaint, as though fully set forth herein.

15 32. The foregoing acts and omissions of Defendants constitute
 16 numerous and multiple knowing and/or willful violations of the TCPA, including
 17 but not limited to each and every one of the above cited provisions of 47 U.S.C.
 18 § 227, *et seq.*

19 33. As a result of Defendant(s)' violations of 47 U.S.C. § 227, *et seq.*,
 20 Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory
 21 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and
 22 47 U.S.C. § 227(b)(3)(C).

23 34. Plaintiff and the Class members are also entitled to and seek
 24 injunctive relief prohibiting such conduct in the future.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for
 27 relief and judgment as follows:

28 1. An order certifying this action as a class action and appointing

CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

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1 Plaintiff and her counsel to represent the Class;

2 2. For the first cause of action:

- 3 • Plaintiff and Class members are entitled to and request \$500.00
- 4 in statutory damages, for each and every violation, pursuant to 47
- 5 U.S.C. § 227, *et seq.*;
- 6 • Preliminary and permanent injunctive relief enjoining
- 7 Defendant(s), their agents, servants and employees, and all
- 8 persons acting in concert with them, from engaging in, and
- 9 continuing to engage in, the unlawful calls made with automated
- 10 dialing systems to cellular phones without prior express consent;
- 11 • Attorneys' fees, costs and any and all other relief that the Court
- 12 deems just and proper.

13 3. For the second cause of action:

- 14 • Plaintiff and Class members are entitled to and request \$1,500.00
- 15 in statutory damages, for each and every violation , pursuant to
- 16 47 U.S.C. § 227, *et seq.*;
- 17 • Preliminary and permanent injunctive relief enjoining
- 18 Defendant(s), their agents, servants and employees, and all
- 19 persons acting in concert with them, from engaging in, and
- 20 continuing to engage in, the unlawful calls made with automated
- 21 dialing systems to cellular phones without prior express consent;
- 22 and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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12304 Santa Monica Blvd., Suite 100
Los Angeles, California 90025

- Attorneys' fees, costs and any and all other relief that the Court deems just and proper.

Dated: April 16, 2015

Respectfully submitted,

By: /s/ John P. Kristensen

John P. Kristensen (SBN 224132)

john@kristensenlaw.com

David L. Weisberg (SBN 211675)

david@kristensenlaw.com

KRISTENSEN WEISBERG, LLP

12304 Santa Monica Blvd., Suite 221

Los Angeles, California 90025

Telephone: (310) 507-7924

Fax: (310) 507-7906

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all such triable claims.

Dated: April 16, 2015

Respectfully submitted,

By: /s/ John P. Kristensen

John P. Kristensen (SBN 224132)

john@kristensenlaw.com

David L. Weisberg (SBN 211675)

david@kristensenlaw.com

KRISTENSEN WEISBERG, LLP

12304 Santa Monica Blvd., Suite 221

Los Angeles, California 90025

Telephone: (310) 507-7924

Fax: (310) 507-7906

Attorneys for Plaintiffs